

For a suit against a physician for causing the death of a patient by an alleged unauthorized and unskillful operation, see *State*, use *Janney v. Housekeeper*, 70 Md. 168.

A suit under this section can not be maintained against a board of county school commissioners. *Weddle v. School Commissioners*, 94 Md. 342.

Where a sheriff is charged with permitting a lynching, his bond can not be sued under this section. *Cocking v. Wade*, 87 Md. 529.

Generally.

The right of action under this section and section 2 distinguished from, and compared with, that of the personal representative of the deceased under article 93, section 104. The history and purpose of the two enactments, traced. They are entirely separate, independent and exclusive of each other. This section created a new cause of action which the deceased never had. Construction of Lord Campbell's Act from which this section was taken. *Stewart v. United, etc., Co.*, 104 Md. 333; *Droneburg v. Harris*, 108 Md. 608.

As to the similarity of this section to Lord Campbell's Act, see also, *Tucker v. State*, use *Johnson*, 89 Md. 475; *B. & O. R. R. Co. v. State*, use *Hauer*, 60 Md. 466; *Philadelphia, etc., R. R. Co. v. State*, use *Bitzer*, 58 Md. 398; *State*, use *Allen v. Pittsburg, etc., R. R. Co.*, 45 Md. 47.

While the burden in the beginning is on the plaintiff to show a *prima facie* wrongful killing, if the defendant alleges justification or excuse, the burden is on him to prove it. *Tucker v. State*, use *Johnson*, 89 Md. 489. (See dissenting opinion also for discussion of burden of proof).

This section has no application where the injury occurs outside of Maryland, although the deceased is a citizen of this state. *State*, use *Allen v. Pittsburg, etc., R. R. Co.*, 45 Md. 45; *Dronenburg v. Harris*, 108 Md. 608.

Where a sheriff is charged with permitting a lynching, his bond can not be sued under this section. The cause of action depends entirely upon this article and it must be prosecuted in the manner herein prescribed only. It can not be converted into an *ex contractu* action, as it has no reference to a contract, or a bond, or any responsibility arising therefrom. *Cocking v. Wade*, 87 Md. 545 (concurring opinion).

The *narr.* need not allege that the defendant's negligence was such that if death had not ensued, the deceased would have been entitled to recover. *Philadelphia, etc., R. R. Co. v. State*, use *Bitzer*, 58 Md. 399.

The declaration may be amended by adding the state as legal plaintiff (so as to conform to the titling and summons). *B. & O. R. R. Co. v. State*, use *Allison*, 62 Md. 481.

An action by the husband for the death of his wife, abates on the death of the husband or of the defendant. There is no contractual relation between the state and the defendant. *Harvey v. B. & O. R. R. Co.*, 70 Md. 324.

For a variance between the proof, and declaration and particular, see *B. & O. R. R. Co. v. State*, use *Woodward*, 41 Md. 297.

Both the deceased and the equitable plaintiff, must have been free from contributory negligence. *State*, use *Coughlan v. B. & O. R. R. Co.*, 24 Md. 107; *B. & O. R. R. Co. v. State*, use *Fryer*, 30 Md. 52.

For cases under this section involving contributory negligence, see *State*, use *Price v. Cumberland, etc., R. R. Co.*, 87 Md. 186; *B. & O. R. R. Co. v. State*, use *Chambers*, 81 Md. 371; *State*, use *Hartlove v. Fox*, 79 Md. 521; *B. & O. R. R. Co. v. State*, use *Strunz*, 79 Md. 335 (involving the imputing of negligence to the plaintiff); *Baltimore, etc., Turnpike Co. v. State*, use *Grimes*, 71 Md. 580; *B. & O. R. R. Co. v. State*, use *Mahone*, 63 Md. 148; *Pennsylvania R. R. Co. v. State*, use *McGirr*, 61 Md. 108; *B. & O. R. R. Co. v. State*, use *Hauer*, 60 Md. 449; *Philadelphia, etc., R. R. Co. v. State*, use *Bitzer*, 58 Md. 397; *State*, use *Bacon v. Baltimore, etc., R. R. Co.*, 58 Md. 482; *State*, use *Hamelin v. Malster*, 57 Md. 287; *Baltimore, etc., R. R. Co. v. State*, use *Stansbury*, 54 Md. 648; *Northern Central R. R. Co. v. State*, use *Burns*, 54 Md. 113; *Cumberland, etc., R. R. Co. v. State*, use *Moran*, 44 Md. 283; *B. & O. R. R. Co. v. State*, use *Woodward*, 41 Md. 299; *Cumberland, etc., R. R. Co. v. State*, use *Fazenbaker*, 37 Md. 156; *B. & O. R. R. Co. v. State*, use *Dougherty*, 36 Md. 366; *B. & O. R. R. Co. v. State*, use *Trainer*, 33 Md. 542; *Northern Central R. R. Co. v. State*, use *Geis*, 31 Md. 357; *B. & O. R. R. Co. v. State*, use *Fryer*, 30 Md. 47; *B. & O. R. R. Co. v. State*, use